

BILL ANALYSIS

H.B. 3060
By: Pena
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

A *capias pro fine* is a writ ordering the arrest of a criminal defendant who has failed to pay court ordered fines, fees, etc.

Chapter 45, Code of Criminal Procedure, expressly authorizes municipal courts and justice courts to issue a *capias pro fine*, but there is no express statutory authorization for district courts and county-level courts to do so. There is a division of opinion in the legal community as to whether these courts can issue a *capias pro fine*. The Texas Judicial Council passed a resolution recommending the enactment of legislation to authorize the issuance of a *capias pro fine* in criminal cases from all courts.

H.B. 3060 seeks to provide express statutory authority for district courts and county-level courts to issue a *capias pro fine*. The bill also seeks to clarify the differences amongst the *capias* issued prior to trial; the *capias* relating to the execution of judgment; the *capias pro fine* currently in Chapter 45, Code of Criminal Procedure; and the arrest warrant issued by a magistrate pursuant to Chapter 15, Code of Criminal Procedure. Additionally, the bill makes technical corrections to the current language in the statute.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

House Bill 3060 amends the Code of Criminal Procedure. The bill clarifies that Article 15.18, Code of Criminal Procedure, does not apply to an arrest made pursuant to a *capias pro fine* issued under Chapter 43 or Article 45.045, Code of Criminal Procedure.

The bill amends Articles 17.19(b) and (c), Code of Criminal Procedure, by providing that a magistrate must issue a warrant of arrest for the principal if the magistrate finds that there is cause for the surety to surrender the surety's principal. It also clarifies that if the court finds that there is cause for the surety to surrender the surety's principal, the court must issue a *capias* for the principal and removes the provision that the court must issue an arrest warrant. Makes conforming changes.

The bill amends the definition of a "*capias*" in Article 23.01, Code of Criminal Procedure, to read that in this chapter, a "*capias*" is a writ that is issued by a judge of the court having jurisdiction of a case after commitment or bail and before a trial, or by a clerk at the direction of the judge, and directed "to any peace officer of the State of Texas," commanding the officer to arrest a person accused of an offense and bring the arrested person before that court immediately or on a day or at a term stated in the writ.

The bill strikes the words "pay a fine" from Article 23.031, Code of Criminal Procedure.

The bill clarifies in Article 23.04, Code of Criminal Procedure, that in misdemeanor cases, the *capias* or summons must be issued from the court having jurisdiction of the case on the filing of an information or complaint. The bill also clarifies that the summons must be issued only upon request of the state's attorney and on the determination of probable cause by the judge, and must follow the same form and procedure as in a felony case.

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The bill also clarifies in Article 23.05(a), Code of Criminal Procedure, that if a forfeiture of bail is declared by a court or a surety surrenders a defendant under Article 17.19, Code of Criminal Procedure, a *capias* must be immediately issued for the arrest of the defendant.

Chapter 43, Code of Criminal Procedure, is amended by adding Section 43.015, Code of Criminal Procedure, to provide a definition of "*capias*" and "*capias pro fine*" for the purposes of that chapter. "*Capias*" is distinguished from "*capias pro fine*" in that a "*capias*" is a writ that is issued by a court having jurisdiction of a case after judgment and sentence, while a "*capias pro fine*" means a writ that is issued by a court having jurisdiction of a case after judgment and sentence for unpaid fines and costs. Both "*capias*" and "*capias pro fine*" are writs that are directed "To any peace officer of the State of Texas" and commanding the officer to arrest a person convicted of an offense and bring the arrested person before the court immediately or on a day or at a term stated in the writ.

The bill authorizes that a *capias* or *capias pro fine* be issued in electronic form. The bill states that Articles 43.03 and 43.09, Code of Criminal Procedure, do not apply to a court governed by Chapter 45.

The bill strikes the words, "for a fine," in Article 43.04, Code of Criminal Procedure.

In Article 43.05, Code of Criminal Procedure, the bill provides that a *capias pro fine* issued for the arrest and commitment of a defendant convicted of a misdemeanor or felony, or found in contempt, the penalty for which includes a fine, must recite the judgment and sentence and command a peace officer to immediately bring the defendant before the court. A *capias pro fine* authorizes a peace officer to place the defendant in jail until the defendant appears before the court.

The bill makes conforming changes and adds *capias pro fine* to be issued to any county. It also makes conforming changes and amends Article 43.07, Code of Criminal Procedure, to refer to a *capias pro fine* instead of a *capias*.

The bill makes conforming changes to clarify that any court may waive payment of fines and costs for indigent defendants in Article 43.091, Code of Criminal Procedure, and specifies that a *capias pro fine* issued under Article 45.045(a), Code of Criminal Procedure, is a *capias pro fine*, as defined by Article 43.015, Code of Criminal Procedure.

The bill amends Article 45.049, Code of Criminal Procedure, and provides that a community supervision and corrections department or a court-related services office is authorized to provide administrative and other services necessary for supervision of a defendant required to perform community service under this article.

The bill adds language in Article 45.0491, Code of Criminal Procedure, to provide that a municipal court, regardless of whether the court is a court of record, or a justice court is authorized to waive payment of a fine or costs imposed on a defendant who defaults in payment if the court determines that the defendant is indigent and discharging the fine and costs under Article 45.049, Code of Criminal Procedure, would impose an undue hardship on the defendant.

H.B. 3060 amends Article 45.046(a), Code of Criminal Procedure, to allow the jailing of a defendant for non-payment if the defendant is found not to be indigent and has failed to make a good faith effort to discharge the fine and costs or the defendant is indigent but has failed to make a good faith effort to discharge the fine and costs under Article 45.049, Code of Criminal Procedure, unless the court has determined that discharging the fine and costs under that article would impose an undue hardship on the defendant.

The bill amends Article 102.011(a), Code of Criminal Procedure, to specify the fee for executing or processing a *capias pro fine*.

The bill repeals Articles 43.02, 43.09(m) and 43.12, Code of Criminal Procedure.

EFFECTIVE DATE

September 1, 2007.